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the circumstances to determine the value of such refusal or false account, was not error prejudicial to accused.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 161.]

2. Homicide (§§ 174 (5), 234 (8)*)—Defendant's Possession of Stolen Property May Be Considered, but Reasonable Doubt Entitles Defendant to Acquittal.—Defendant's recent possession of property on deceased's person at the time of the homicide is merely a matter of evidence to be considered with other evidence, and does not throw the burden on accused to overcome the presumption arising therefrom, and if, on the whole evidence including such recent possession, a reasonable doubt remains in the minds of the jurors as to defendant's guilt, he is entitled to the benefit of such doubt.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 638.]

3. Criminal Law (§ 810*)—Instruction as to Possession of Stolen Property Not in Conflict with Instruction on Reasonable Doubt.—On a trial for murder, an instruction as to the effect of evidence of defendant's exclusive possession of property in the possession of deceased at the time of his death held not in conflict with instructions as to the presumption of innocence and the burden resting on the commonwealth to prove defendant's guilt beyond a reasonable doubt.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 736.]

4. Homicide (§ 253 (2)*)—Evidence Sufficient to Support Conviction.—On a trial for murder, where there was evidence that a pistol and holster found in defendant's possession was on deceased's person when last seen alive, evidence held sufficient to support a verdict of first degree murder against defendant.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 152.]

Error to Hustings Court of Richmond.

Will Elmoe was convicted of murder on the first degree, and he brings error. Affirmed.

Thos. I. Talley and Geo. L. Oliver, both of Richmond, for plaintiff in error.

Jno. R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and Leon M. Bazile, 2d Asst. Atty. Gen., for the Commonwealth.

NUSBAUM v. CITY BANK & TRUST CO.

Jan. 19, 1922.

[110 S. E. 363.]

1. Bankruptcy (§ 151*)—Trustee's Title Is Very Broad One.—The rights of the trustee in bankruptcy are not limited to the rights of a judgment creditor holding an execution returned unsatisfied, given him by Bankruptcy Act, § 47a, as amended by Act June 25, 1910 (U. S. Comp. St. § 9631), but under other sections of the act he takes all the rights of the bankrupt in his property, and all of the rights of

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the creditors, including the right to set aside conveyances which bind the bankrupt, and takes title to certain property which the bankrupt has voluntarily parted with, and could not reclaim.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 239.]

2. Principal and Agent (§ 145 (1)*)—Under Sign Statute, Property Consigned to Trader for Sale May Be Seized by Creditors.—Under the Virginia Traders' Act (Code 1919, § 5224), providing that, if a trader in his own name fails to disclose the name of his principal or partner by a conspicuous sign and published notice, all property acquired or used in the business shall be liable for his debts, a motor truck, consigned by the manufacturer to a corporation engaged in selling such trucks in its own name for sale by the corporation, is subject to the debts of the corporation.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 277.]

3. Bankruptcy (§ 159*)—Circumstances Constituting "Unlawful Preference" Stated.—Preference is unlawful under the Bankruptcy Act (U. S. Comp. St. §§ 9585-9656) if made within the prescribed four months, at a time when the party making it was insolvent, if the property transferred was such that his creditors had the right to have it subjected to their claims, if he intended to create a preference, and if the transferee had reasonable cause of belief that the transferor had such intention.

[Ed. Note.—For other definitions, see Words and Phrases, Second Series, Unlawful Preference. For other cases, see 2 Va.-W. Va. Enc. Dig. 237.]

4. Bankruptcy (§ 165 (2)*)—Trustee Can Set Aside Preferential Payment Made by Proceeds from Property Subject to Debts.—Where the bankrupt had made a payment to a creditor, within four months of bankruptcy, from the proceeds of a sale of a motor truck consigned to it for sale under circumstances entitling the bankrupt's creditors to subject the truck to payment of their claims, the trustee in bankruptcy can have the payment set aside.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 244.]

Error to Circuit Court of City of Norfolk.

Motion by Bertram S. Nusbaum, as trustee in bankruptcy for Gatewood & Steinbaugh, Inc., against the City Bank & Trust Company, to set aside an illegal transfer, whereby the bank had obtained a preference. The trial judge set aside a verdict for plaintiff as contrary to the law and the evidence, and entered judgment for defendant, and plaintiff brings error. Reversed, and judgment entered for plaintiff in accordance with the verdict.

Jas. G. Martin and *Chas. L. Kaufman*, both of Norfolk, for plaintiff in error.

L. B. Cox, of Norfolk, for defendant in error.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.